IN THE SUPREME COURT OF THE STATE OF MICHIGAN

No. 43,623½

EVA MAE SPEARS,

Plaintiff-Appellee,

vs.

COMMUNITY NATIONAL BANK OF PONTIAC, MICHIGAN, WILLIAM TALMADGE SPEARS, BETTIE TUNSELL, KING DAVID, AND LEON H. HUBBARD, SUCCESSOR SPECIAL ADMINISTRATOR, *Defendants-Appellants,* AND I. H. SPEARS, ASSIGNEE OF WILLIAM TALMADGE SPEARS, BETTIE TUNSELL AND KING DAVID.

JURISDICTIONAL STATEMENT GROUNDS

In this cause Eva Mae Spears, the widow of Mansfield L. Spears, deceased, filed suit in Chancery Court of Oakland County, Michigan, seeking to declare a trust and to have the court declare a bank account, in the savings department of the defendant bank, declared hers by right of survivorship and original joint ownership thereof between plaintiff and the deceased; three beneficiaries of the estate are named as defendants; four other beneficiaries of said estate were never brought into this case. The plaintiff obtained judgment in the trial court; the three beneficiaries of this trust appealed to the Supreme Court of Michigan; there is a large record in this case and it takes some time to com-

plete same for the Supreme Court of Michigan; and although the case is in the Supreme Court of Michigan, the record has not been completed as yet; but while the record was being made, I. H. Spears filed with the Supreme Court of Michigan petition and affidavit for an extension of time to make the record for the Supreme Court of Michigan and for substitution of I. H. Spears as appellant by reason of assignment of interest by the three beneficiaries to him.

The amount involved in this cause is the bank deposit which amounts to $18,234.00 and more; and these beneficiaries' interest amounts to approximately $12,000.00.

The plaintiff-appellee resisted said application, and pleaded Michigan Annotated Statutes, Sections 27.87, 27.88 and 27.92, respectively; the court sustained the objection and denied extension of time and substitution of party; thereafter, assignee filed petition for rehearing or reconsideration of said petition for extension and substitution in which he pleaded the invalidity of said order or decree as being in violation of Section 1, 14th Amendment, Constitution of the United States; and in violation of the laws and decisions of the State of Michigan in such cases made and provided.

The jurisdiction of the Supreme Court of the United States upon appeal is invoked under Section 237 Judicial Code, Amended, 28 U. S. C. A. Section 344, (b) and (c)—Art. 3, Section 2, United States Constitution—Act of Congress, 28 U. S. C. A. 41 (1); Art. 4, Section 2, U. S. Const. 5th Amendment, 4th Clause U. S. Const. 14th Amendment, Section 1, Const. U. S.

The Statutes of the State of Michigan, the Validity of which is involved, in pertinent parts as follows:

"Sec. 27.87—No attorney or counsellor shall, either directly or indirectly, buy, or be in any manner interested in buying, any bond, promissory note, bill of exchange, book

debt or other thing in action, with the intent and the purpose of bringing any suit thereon."

"Section 27.87—Every attorney or counsellor who shall violate the last preceding section, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by fine not exceeding one thousand (1000) dollars, or by imprisonment in the County Jail not exceeding six (6) months, or both in the discretion of the court, and shall be removed from office in the several courts in which he is allowed to practice."

"Section 27.92—If on such examination it shall appear that the cause of action on which such suit was founded has been brought, or procured contrary to the true intent, of the provision of this chapter, the plaintiff in such action shall be nonsuited."

The assignee claims an absolute right to be substituted; and that said Statutes are void and unconstitutional, and deny to this assignee the equal protection of the law; and deprives him of his property without due process of law; and interferes with assignee's right of contract in violation of the Federal Constitution and laws in such cases made and provided.

The appeal prayed for is to the Supreme Court of the United States from the final decree or judgment denying assignee's petition for substitution, and extension, and is provided for by 28 U. S. C. A. Section 344 (Section 237 Jud. Code, Amended).

Application for appeal is made this 13 day of March A. D. 1947.

Cases believed to sustain Jurisdiction of Supreme Court of the United States are:

In re Anderson's Will, 281 N. Y. S. 831; 156 Misc. 268;
Betts v. *Brady*, 62 S. Ct. 1252, 316 U. S. 455, 86 L. Ed. —;

Maliniski v. *People of N. Y. State*, 65 S. Ct. 781, 89 L. Ed. —;
Manhattan L. Ins. Co. v. *Cohen*, 234 U. S. 123, 134, 58 L. Ed. 1245;
Henderson v. *U. S.*, 63 F. Supp. 906;
Queenside Hills Realty Co. v. *Sake*, 66 S. Ct. 850;
Christmas v. *Russell*, 14 Wall. 69, 20 L. Ed. 762;
Kendall v. *U. S.*, 74 U. S. 113, 7 Wall. 113;
Walker v. *Brown*, 165 U. S. 654;
Smith v. *Indiana*, 191 U. S. 138, 48 L. Ed. 125;
Stroder v. *Baldwin*, 9 How. 261;
State Tax Commission of Utah v. *Vancott*, 306 U. S. 511, 83 L. Ed. 950;
Mendez v. *Bowie*, 118 F. 2nd. 435;
Demorest v. *City Bank Farmers T. Co.*, 321 U. S. 36, 88 L. Ed. 526;
Steingut v. *Guarantee T. Co., of N. Y.*, 58 F. Supp. 633;
Bragg v. *Gerstel*, 148 F. 2nd. 757;
Charleston Fed. etc., v. *Alderson*, 65 S. Ct. 624;
Snowden v. *Hughes*, 321 U. S. 1, 88 L. Ed. 497;
Federal Rules of Civil Procedure, Rule 25 (c) following 28 U. S. C. A. 723c.

Respectfully submitted,

I. H. Spears (Isaiah H. Spears) *Pro Se*,
Attorney at law,
73 W. Bellevue Dr.,
Pasadena 2, California.

At a Session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the fourteenth day of January, in the year of our Lord one thousand nine hundred and forty-seven.

Present the Honorable Leland W. Carr, Chief Justice; Henry M. Butzel, George E. Bushnell, Edward E. Sharpe, Emerson R. Boyles, Neil E. Reid, Walter H. North, John R. Dethmers, Associate Justices.

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EVA MAE SPEARS,

Plaintiff,

vs.

COMMUNITY NATIONAL BANK OF PONTIAC, ET AL.,

Defendants and Appellants

In this cause a motion is filed by I. H. Spears for a reconsideration of the order heretofore entered herein on December 17, 1946, denying his motion for an extension of time, and to strike the name of George A. Sutton as attorney in the case, and due consideration thereof having been had by the court, It is ordered that the order heretofore entered herein on December 17, 1946, as aforesaid, stand affirmed, and that the motion to strike the name of George A. Sutton be and the same is hereby denied.

STATE OF MICHIGAN, SS:

I, Jay Mertz, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; and that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 15th

day of January, in the year of our Lord one thousand nine hundred and forty seven.

JAY MERTZ,
Clerk.

(Order of December 17th 1946—omitting heading and certificate—which are the same as above.)

"In this cause a motion is filed by I. H. Spears to substitute I. H. Spears as party defendant and appellant in the cause, and to extend the time within which to settle the record on appeal from the Circuit Court for the County of Oakland, in Chancery, and a brief in opposition thereto having been filed by plaintiff, and due consideration thereof having been had by the court, It is ordered that the Motion be and the same is hereby denied."

Copies of decrees attached.